

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matter of</i>)
)
<i>BellSouth Telecommunications, Inc.</i>)
)
<i>Request for Declaratory Ruling That</i>)
<i>State Commissions May Not Regulate Broadband</i>)
<i>Internet Access Services By Requiring BellSouth</i>)
<i>To Provide Wholesale Or Retail Broadband</i>)
<i>Service To CLEC UNE Voice Customers</i>)
)

WC Docket No. 03-251

MOTION FOR EXTENSION OF TIME

Pursuant to Section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, the National Association of Regulatory Utility Commissions ("NARUC") files this motion seeking an extension of the deadlines for all interested parties to file comments in the above-captioned proceeding from January 15, 2002 to February 20, 2003 and to file reply comments from January 30, 2004 to March 15, 2003. NARUC submits that this brief extension of time will permit more substantive and complete responses on the complex legal, economic and policy issues raised in this proceeding. Further, this modest extension will not prejudice any interested parties.

BellSouth filed a Petition for Declaratory Ruling Rulemaking December 9, 2003 asking the FCC to preempt State regulatory commissions from requiring incumbent local exchange carriers to provide DSL service to existing customers that wish to switch voice service to a competitive local exchange carrier. The Commission on December 16, 2003 issued a Public Notice (DA 03-3991), establishing a pleading cycle on the Petition. The Public Notice requires that comments be filed by January 15, 2004 and reply comments by January 30, 2004.

BellSouth's Petition concerns the legality of regulatory actions undertaken by four of NARUC member State commissions in furtherance of their obligations to promote competition in local voice markets and promote deployment of broadband capabilities to all Americans. Further, as BellSouth acknowledges, several other member State commissions are actively considering whether to undertake similar actions. It cannot be clearer that the issue presented in BellSouth's Petition is of the utmost concern to NARUC's member commissions. However, adequate briefing of these issues is not possible under the current schedule. Not only does the current schedule require that comments be filed within a month of the Public Notice, but the expedited schedule runs over the Hannukah, Christmas and New Years holidays. Further, the BellSouth's Petition presents complex issues regarding the allocation of jurisdiction between the States and the Commission to regulate facilities that are used to provide interstate and intrastate services. Moreover, BellSouth's Petition comprises several hundred pages of briefing and attachments.

At the same time, there is no compelling need for the expedited schedule adopted by the Commission. Although BellSouth styles its Petition as an "Emergency Request," any emergency that exists can be one only of BellSouth's own making. Contrary to BellSouth's suggestion, the decisions of which BellSouth now complains were not recently issued, but have been on the books for several months and, in some cases, well over a year. Further, the proceedings that initiated these decisions began well in advance of the decisions and BellSouth was an active participant in these proceedings.

In each case, BellSouth had the option of seeking a declaratory order by the Commission but chose instead to file a complaint in federal district court. In several instances, these federal court proceedings are quite mature.

BellSouth's complaints in Florida and Kentucky have both been fully briefed and argued, and BellSouth has also briefed its Complaint in Louisiana. Thus, it is clear that the true "emergency" that has motivated BellSouth's current filing is that BellSouth understands that it is unlikely to obtain the relief that it wants in its chosen *fora* and that it urgently needs a different venue for its arguments. Irrespective of whether BellSouth should be allowed to reverse field in this manner, NARUC strongly believes that it would be inappropriate for the Commission to set an expedited briefing schedule that precludes NARUC and its member commissions from responding fully and adequately to BellSouth's arguments.

Finally, the extension that NARUC seeks is clearly modest under these circumstances. This change should have little, or no, impact on the ability of the Commission to rule on BellSouth's Petition in the same time period as the existing schedule. By setting the reply comment deadline for mid-March, the Commission may well benefit from discussions at NARUC's winter meetings on this issue – which could well generate additional and relevant record submissions from NARUC member commissions and others for the FCC's consideration.

For all of these reasons, NARUC respectfully requests that the Commission grant its motion for an extension of time until February 20, 2003 for comments and March 15, 2003 for reply comments.

Respectfully submitted,

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December 23, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2002, I caused true and correct copies of the forgoing Motion for Extension of Time to be served on parties listed below by **1st Class Mail**. In addition, I have forwarded a “word” copy of this pleading to the e-mails listed below:

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